

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BLACK MOUNTAIN FEEDERS, LLC)	
)	
_____)	CASE NO.
)	2021-00167
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Black Mountain Feeders, LLC (Black Mountain Feeders) has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

Pursuant to KRS 278.495(2), the Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Act, the Commission has authority to investigate and assess civil penalties for any violation of the Act that results in excavation damage to an underground facility used to transport natural gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.* Any person who violates any provision of the Act is subject to assessment of a civil penalty in the amount of \$250 for the first offense, no more than \$1,000 for the second offense within one year, and no more than \$3,000 for the third and any subsequent offense. Additionally, any person whose violation of the Act results in damage to an underground facility containing any flammable, toxic, corrosive,

¹ KRS 367.4901 through KRS 367.4917.

or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material is subject to an additional penalty of up to \$1,000.

Following receipt of a report of excavation damage to its underground gas pipeline from an operator, Commission Staff (Staff) conducted an investigation and prepared an Incident Report, a copy of which is attached to this Order as an Appendix. In its Incident Report, Staff cites Black Mountain Feeders for violation of the following provisions of the Act:

KRS 367.4911(6) – The Excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.

KRS 367.4911(10) – When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Black Mountain Feeders violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident should be conducted.

IT IS THEREFORE ORDERED that:

1. Black Mountain Feeders shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.

2. **Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in**

Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.

3. The Staff Incident Report 31795 in the Appendix to this Order is made a part of the record in this case.

4. **Please note that notice of a hearing to be held in this matter will be mailed to Black Mountain Feeders once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:


Linda C. Bidwell
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00167 DATED APR 19 2021

SIX PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout	Incident ID 31795
Incident Date 7/2/2019 4:35:00 PM	Report Submitted 7/23/2019 3:52:11 PM

OPERATOR INFORMATION

Operator Benton Gas System City of Benton Phone (270) 527-3717 Incident Location Ross Lane 156 Ross Ln Benton, KY 42025 Marshall	Reported By Brittany Canup Email bcanup@bentongas.org Locate Ticket Number 1906131168
---	--

EXCAVATOR INFORMATION

Name of Excavator Willett, Tyler Phone 270-804-1717 Excavator Address 6972 State Route 564 N Farmington, KY 42040	Organization ID Email Locate Ticket Number
--	---

INCIDENT

The Operator reports that the Excavator damaged a two inch main installing a fence by failing to use hand tools. Gas was released for 35 minutes.

The Damage Report is include as Attachment 1.

<u>Locate Ticket Summary</u>						
Ticket #	Valid	Initial Date	Expiration Date (21 calendar days from Initial date)	Incident Date	# of Days Expired	Within Scope of Excavation
1906131168	Yes	06/13/19	07/03/19	07/02/19	0	Yes

The Locate Ticket is include as Attachment 2.

<u>Excavation Summary</u>			
Excavation Within 18" (Approximate Location)	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
Yes	Mechanized / Skid Steer w/Auger	\$913.00	\$0.00

INVESTIGATION

On 03/16/20 the Operator, Benton Gas System's Brittany Canup, stated that the gas main was damaged by a skid steer with an attached auger. Ms. Canup stated that no photographs were available and the locate marks were not visible due to the traffic by the skid steer. Ms. Canup stated that Black Mountain Feeders, LLC was the company installing the fence.

On 03/16/20 the Excavator, Black Mountain Feeders' Tyler Willett, stated that the gas line was damaged by a skid steer with an auger attached to erect a fence. Mr. Willett stated that the gas main was correctly marked and the location marks were worn away by skid steer traffic. Mr. Willett was receptive to attending the Damage Prevention Course and payment of the reduced penalty of \$250.00.

VIOLATION

KRS 367.4911

(6) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.

(10) When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.

<u># of Previous Offences</u>		
Excavator	Last Offence Incident Date	Last Offence Incident #
1 st	N/A	N/A

Attachment 1

Gas Excavation Damage Report

Benton Gas System City of Benton

Submitted 7/23/2019 Incident ID: 31795

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=31795\)](#)

Reported By:

Name: Brittany Canup
Phone: (270) 527-3717
Email: bcanup@bentongas.org

Gas Line Incident Occured:

Date: 7/2/2019
Time: 4:35 PM

Details:

Reported Date: 7/23/2019 3:52 PM

Incident Location Address:

Location: Ross Lane
Address: 156 Ross Ln
City: Benton
State: KY
County: Marshall
Zip: 42025
Confirm Code:
Number of Customers out: 0
Locate Request Ticket No.: 1906131168
Excavator: Municipality

Excavator Address:

First Name: Tyler
Last Name: Willett
Company:
Phone: 270-804-1717
Email:
Address: 6972 State Route 564 N
City: Farmington
State: KY
Zip: 42040
Confirm Code: Y

Excavation Damage: Failure to use hand tools where required

Description of Incident hit 2" gas main installing fence

Summary Information

7/23/2019

Full details such as the cause Hit 2" gas main installing fence
Extent of the damage gas blew for 35 mins.
Cost of the damage \$913.00
Steps taken to prevent re-occurrence Always call 811 Hand dig 18"
Amount billed to excavator \$913.00

Attachment 2

NORMAL NOTICE SEE REMARKS

Ticket : 1906131168 Date: 06/13/2019 Time: 11:52 Oper: SGAETA Chan:000

State: KY Cnty: MARSHALL City: BENTON
Subdivision:

Address :

Street : ROSS LN

Cross 1 : SCALE RD

Location: FROM THE ABOVE INTERSECTION - LOCATE NORTH FOR 1500 FEET ON BOTH SIDES
OF THE ROAD - FROM RIGHT OF WAY TO RIGHT OF WAY FOR THE ENTIRE LOCATE DISTANCE

:

Boundary: n 36.911913 s 36.906710 w -88.381683 e -88.379845

Work type : INSTALLING FENCE POSTS

Done for : JAYS ELECTRIC COMPANY

Start date: 06/17/2019 Time: 12:00 Hours notice: 96/48 Priority: NORM

Ug/Oh/Both: U Blasting: NO

Emergency: N

Duration : N/A

Depth: 4 FEET

Company : JAYS ELECTRIC COMPANY Type: CONT

Co addr : 156 ROSS LANE

City : BENTON State: KY Zip: 42025

Caller : BRANDON HARMON Phone: (270)527-2201

Contact : BRANDON HARMON - CELL Phone:

Mobile : (270)703-6822

Fax : (270)527-2202

Email : BRANDON@JAYSELECTRIC.COM

Remarks : REQUESTING FLAGS ONLY - PLEASE DO NOT USE PAINT

:

Submitted date: 06/13/2019 Time: 11:52

Members: 0127 0139 0383 0656 0657

Black Mountain Feeders, LLC
6972 State Route 564
Farmington, KENTUCKY 42040